

SERVICE DATE – FEBRUARY 18, 2016

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB 33 (Sub-No. 318X)

UNION PACIFIC RAILROAD COMPANY—ABANDONMENT
EXEMPTION—IN MCLENNAN COUNTY, TEX.

Decided: February 17, 2016

This decision reopens the proceeding to issue a notice of interim trail use (NITU).

Union Pacific Railroad Company (UP) filed a verified notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon 2.45 miles of rail line between milepost 2.31 and milepost 4.76 near Waco, in McLennan County, Tex. (the Line). Notice of the exemption was served and published in the Federal Register on January 4, 2016 (81 Fed. Reg. 142). The exemption became effective on February 3, 2016.

The Board's Office of Environmental Analysis (OEA) served an environmental assessment (EA) on January 8, 2016, solicited comments, and issued a Final EA on January 28, 2016. No environmental or historic preservation issues were raised by any party or identified by OEA. Accordingly, on February 2, 2016, a Finding of No Significant Impact under 49 C.F.R. § 1105.10(g) was made pursuant to 49 C.F.R. § 1011.7(a)(2)(ix).

In the EA, OEA stated that the right-of-way may be suitable for other public use following abandonment and salvage of the Line. On February 2, 2016, the City of Waco, Tex. (City), filed late a request for the issuance of a NITU for a 180-day period to negotiate with UP for acquisition of the Line for use as a trail under the National Trails System Act, 16 U.S.C. § 1247(d) (Trails Act), and 49 C.F.R. § 1152.29.¹ The City has submitted a statement of willingness to assume full responsibility for managing the right-of-way, for any legal liability arising out of the transfer or use of the right-of-way (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for the payment of any and all taxes that may be levied or assessed against the right-of-way, as required by 49 C.F.R. § 1152.29. The City also acknowledges that the use of the right-of-way for trail

¹ The January 4, 2016 notice provided that requests for trail use/rail banking were to be filed by January 14, 2016. However, in Abandonment & Discontinuance Of Rail Lines & Transportation Under 49 U.S.C. § 10903, 1 S.T.B. 894 (1996) and 2 S.T.B. 311 (1997), the Board retained the policy of accepting requests after the due date when good cause is shown. Because there is no indication that the City's late-filed request will prejudice any party, it will be accepted. See Wheeling & Lake Erie Ry.—Aban. Exemption—in Starke Cty., Ohio, AB 227 (Sub-No. 10X), slip op. at 1 n.1 (STB served Nov. 7, 1997).

purposes is subject to the user's continuing to meet the responsibilities described above and subject to possible future reconstruction and reactivation of the right-of-way for rail service. In a response filed on February 3, 2016, UP states that it agrees to negotiate for interim trail use/rail banking.

Because UP agrees to the City's request for a NITU and the City's request complies with the requirements of 49 C.F.R. § 1152.29, this proceeding will be reopened and a NITU will be issued. The parties may negotiate an agreement during the 180-day period prescribed below. If an interim trail use agreement is reached (and thus, interim trail use is established), the parties shall jointly notify the Board within 10 days that an agreement has been reached. 49 C.F.R. § 1152.29(d)(2) and (h). If no agreement is reached within 180 days, UP may fully abandon the Line. 49 C.F.R. § 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to possible future reconstruction and reactivation of the right-of-way for rail service.

It is ordered:

1. This proceeding is reopened.
2. The City's late-filed request for a NITU under 16 U.S.C. § 1247(d) is accepted and granted.
3. Upon reconsideration, the January 4, 2016 notice exempting the abandonment of the Line described above is modified to the extent necessary to implement interim trail use/rail banking as set forth below to permit the City to negotiate with UP for trail use for a period of 180 days from the service date of this decision and notice (until August 16, 2016).
4. If an interim trail use/rail banking agreement is reached, it must require the trail sponsor to assume, for the term of the agreement, full responsibility for: (i) managing the right-of-way; (ii) any legal liability arising out of the transfer or use of the right-of-way (unless the sponsor is immune from liability, in which case it need only indemnify the railroad against any potential liability); and (iii) the payment of any and all taxes that may be levied or assessed against the right-of-way.
5. Interim trail use/rail banking is subject to possible future reconstruction and reactivation of the right-of-way for rail service and to the trail sponsor's continuing to meet its responsibilities for the right-of-way described in paragraph 4 above.
6. If an interim trail use agreement is reached (and thus, interim trail use is established), the parties shall jointly notify the Board within 10 days that an agreement has been reached. See 49 C.F.R. § 1152.29(d)(2) and (h).

7. If interim trail use is implemented, and subsequently the trail sponsor intends to terminate trail use on all or any portion of the right-of-way covered by the interim trail use agreement, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.

8. If an agreement for interim trail use/rail banking is reached by August 16, 2016, for the right-of-way, interim trail use may be implemented. If no agreement is reached, UP may fully abandon the Line.

9. This decision and notice is effective on its service date.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.